

DRAFT MINUTES
DNR New Source Review Retooling Advisory Group
Meeting 8 - November 5, 2003 - Madison, WI

Advisory Group Participants: Renee L. Bashel, Dept. of Commerce; Jeff Burger, DNR Southeast Region; Lloyd Eagan and Jeff Hanson, DNR Bureau of Air Management; Myron Hafele, Kohler Co.; Rick Osa, STS Consultants; Michele Pluta, Alliant Energy; Annabeth Reitter, StoraEnso; Jeff Schoepke, Wisconsin Manufacturers & Commerce; Imelda Stamm, DNR Northeast Region; Thomas T. Stocksdale, S.C. Johnson; Mark Thimke, Foley & Lardner; Paul White (for Jon Konings), We Energies. **Absent:** Tom Estock, Quad/Graphics, Inc; Howard Hofmeister, Bemis Corp.

Others: Todd Palmer, DeWitt, Ross & Stevens; Ed Wilusz, Wisconsin Paper Council; Cindy Brandt, WI Public Service Corp.; Carla Kramer, International Paper Co.; Pat Stevens, Wisconsin Transportation Builders Association; Neil Howell, Dept. of Administration; Al Shea, Mary Jo Kopecky and Lois Aide, DNR Division of Air & Waste; John Shenot, DNR Bureau of Cooperative Environmental Assistance; Marcia Penner, DNR Legal Services; Greg Swanson, DNR Bureau of Communication & Education; Darin Harris, DNR Management & Budget (facilitator); Steve Dunn, Caroline Garber, Anne Urbanski (note taker), DNR Bureau of Air Management.

Handouts/Overheads: See <http://www.dnr.state.wi.us/org/aw/air/hot/nsr/nov052003/>

Next meeting: Thursday, November 13, 2003, from 9:00 a.m. to 2:00 p.m. in the large ground-floor conference room at the Wisconsin Department of Commerce, 201 W. Washington Ave., Madison.

Discussion

Introductions, agenda repair, etc. No comments at this time on the 10/29/03 minutes. Please send any comments to Anne Urbanski, anne.urbanski@dnr.state.wi.us.

Overview of Wisconsin's NSR reform package - version 1 - Caroline Garber outlined where DNR thinks the advisory group currently stands on each of the four basic issues - applicability, pollution control projects, Clean Units and Plantwide Applicability Limits. (See <http://www.dnr.state.wi.us/org/aw/air/hot/nsr/nov052003/packageoverview.pdf>.) This package deals only with major sources because of the tight time frame we're on to produce a rule draft. Dealing with the interface between this rule revision (NR 405) and the minor source rule (NR 406) will be one of the group's next steps.

PALs review - Jeff Hanson. See <http://www.dnr.state.wi.us/org/aw/air/hot/nsr/oct292003/pals3.pdf>. Underlined areas in slides show where DNR is proposing something that differs from the federal rule. NSR avoidance caps will be included in the PAL. Slide 5, Clean Unit opt-out, is a new approach for DNR; the lengths of the PAL and the CU designation would coincide. Hanson asked if DNR is going in generally the right direction now on PALs. The consensus was yes, in general. There is still concern that DNR's PAL is so inflexible that companies won't use it. Industry would like to see a cap over all emission units in the PAL, not one that singles out specific units within the PAL. Companies would enter PALs for the flexibility to move emissions around among unit. Could get at that issue by capping at NSR avoidance limits instead of having a 10-year lookback on any particular emission unit. Basically you build the avoidance cap into setting the PAL emission limit; this could alleviate the record-keeping burden. So the rule should include this option, "Cap emissions for specific unit at the PSD avoidance level." DNR replied that a source should maintain its previous emission commitments but if the source needed to grow beyond that level, it could take a Clean Unit opt-out on that unit. Another idea, posed by Ty Stocksdale - Subtract consumed air

quality increment from actual emissions from the significance level (??); you have a sort of retroactive PAL. Language should be something like, "Need to adjust the significance threshold by your previous emission allowance, but do not go below zero." (See ***PALs Ideas*** below.) Lloyd Eagan said Ty's proposal offers a way to decrease the size of the PAL cap in exchange for allowing all units to be used flexibly under the PAL bubble. DNR is looking for ways to make PALs more attractive to industry. The Clean Unit opt-out and "virtual BACT" (see below) are two options that might do that. Industry seemed amenable to spending more time at the beginning of the process determining emissions levels. Monitoring requirements in DNR's rule would be essentially the same as in the federal rule. Industry suggested using the acid rain law as a model for criteria for filling in any monitoring data that might be missing due to downtime, etc. The PALs final review list (below) shows the consensus the group reached on items to include in DNR's draft rule. Darin Harris commended the group for working really hard to make PALs work for industry while meeting DNR's interests. He asked whether this package might increase the chances that industry will actually use this too; industry said this gives some additional consideration for some facilities to use a PAL. DNR staff plan to have a draft prepared by 11/15 and hoped to give portions of it to DNR Legal Services by 11/7 for initial comments. DNR intends to show a first draft to the group at the 11/13 meeting.

PALs Ideas 11/5/03

- Clean Unit opt-out
 - Cap emissions for particular unit limit at NSR
 - Unit P10 = 15 tons
 - $10 + 20 + 20 + 40 + 5 (15-10) = 95$
 - Adjust significance threshold to what you could previously apply
- Maintain NSR avoidance caps
 - Alternative (re: Significance level): "PAL significance level would equal baseline actual emissions plus significance threshold minus the baseline actual emission rate of units that had accepted avoidance limitations." (Ty Stocksdale proposal)
 - Alternative (re: BACT): "Virtual BACT: Baseline rate for unit would be reduced to BACT level."
- Avoidance cap options:
 - Keep avoidance cap, OR
 - Significance level, OR
 - BACT level (in attainment areas) or LAER level (in nonattainment area)

PALs - Final Review

- 1) Clean Unit opt-out ✓
 - ☒ exclusion from PAL, utilization increase per CU ✓
- 2) Avoidance caps ✓
 - ☒ Keep avoidance level, OR
 - ☒ Significance level reduction OR
 - ☒ Reduction to unit to BACT/LAER
- 3) Monitoring ✓
- 4) Reopening PAL ✓

Clean Units - See <http://www.dnr.state.wi.us/org/aw/air/HOT/nsr/nov052003/draftcleanunits.pdf>. Clean Unit status would be automatic for most emission units that have already had a major source NSR review

and are complying with BACT/LAER. Provisions for retroactive CU determination date and submission deadline for retroactive determination are both new to this proposal. All of DNR's redesignation options differ from the federal rule. Right now DNR has no preferred option so will put all 3 in the draft rule to see what kinds of comments are received. Industry said it could benefit both sides if DNR had a CU option and really sold it to industry. Case by case makes it easier for facilities to sell their management on the capital investment needed for CU's.

Clean Units Final Review

- 1) Qualification as CU
- 2) Term
 - Up to 10 years
 - Clean Unit opt-out in PAL
- 3) Redesignation options (if area is redesignated to nonattainment)
 - Reevaluate
 - Offset requirement from CU
 - Case by case as part of SIP
- 4) Netting
- 5) Emission Reduction Credits

PCP Exclusion - See <http://webtest.dnr.state.wi.us/org/aw/air/HOT/nsr/nov052003/draftpcps.pdf>. Slide 4 discusses listed projects vs. unlisted projects; Hanson said DNR wants to keep this open. Facilities still have to do an air quality analysis for listed projects; unlisted projects would require a permitting action. Industry asked if DNR would consider a backend deadline on the "provide notice and wait up to 21 days" option. Hanson said a new 21-day response clock would be triggered each time a facility contacted or responded to DNR. If a facility decided it couldn't wait up to 21 days, it would have to proceed at its own risk. The package still requires facilities to notify DNR about PCPs. The listed projects in slide 6 include NOx controls (third listed group) and VOC controls (fourth group). Emission reduction credits from PCPs would be handled similar to ERCs from Clean Units. Eagan said DNR regulations may not refer to guidance, so DNR cannot include language such as "other projects the Department has recognized in writing" to refer to unlisted projects to be added to the list. However, newly listed projects could be included a rule cleanup package once or twice a year.

Pollution Control Project Final Review

- 1) Qualification - pass 2 tests
- 2) Listed project v. unlisted
 - Listed = proceed or 21 day notice
 - Unlisted = permit action
- 3) Notice requirements
- 4) Emission Reduction Credits and PCPs
 - Similar to Clean Units
 - ERC is surplus if beyond PCP levels
 - ERC is not surplus if accounted for in PCP tests

Applicability test - See <http://www.dnr.state.wi.us/org/aw/air/HOT/nsr/nov052003/draftapplicability.pdf>.

Hanson said the main issue still to be resolved is growth due to demand (see slide 8). Myron Hafele provided an example of emissions growth from an engine test stand. His company could track the additional units sold due to changing the size of the engine test stand and could separate out that

demand from demand for the existing product (?). Industry asked if DNR had checked with its counterparts in Michigan and Minnesota to see how they are handling demand growth. Hanson said Michigan is putting most of the burden on facilities to figure this out and treating demand growth on a case-by-case basis. Eagan's concern is that Wisconsin's NSR rule leaves demand growth totally undefined, there is tremendous potential for EPA to come back a few years from now and attempt enforcement actions on PSD lookbacks. Industry shares DNR's concern that a completely undefined process is an enforcement trap for companies. DNR said its main issue is determining the criteria for projecting growth. Industry said there must be some kind of placeholder language about this in the draft rule so they can provide comments. Harris noted an emerging compromise of including some language that would allow clarity to emerge by the end of the rule process, rather than not mentioning demand growth at all. Specific options could include historical data or other ideas group member might come up with. Industry suggested a fallback position to the idea of certification; companies would have the burden of maintaining records and justifying growth numbers that someone in management would certify and be legally responsible for. Harris asked the group to send any new ideas to Jeff Hanson by November 12. Todd Palmer said the group doesn't disagree on the concept of demand growth but can't agree yet on how to implement it. DNR wants to make sure the rule language isn't vague.

Hanson noted that EPA has issued a definition of "replacement unit" that starts with reconstruction and goes up. But there is a gray area concerning 20% - 50% reconstruction.

Returning to the "notice-and-go" issue, DNR added this provision (not in federal rule) in slide 9: "Using projected actual, include details on projection if projected minus baseline actual emission rate exceeds significant threshold." Industry asked whether DNR was asking companies to submit demand data here. Hanson said they would need to submit the projected actual on a changed unit as a result of the change. He gave an example of a 50-ton unit (see below). Industry asked if they would have to turn over their records to DNR; DNR said no, Department staff would go to the site and look at the demand growth records. The sticking point is that industry does not want to submit records for demand growth. After more discussion the group agreed that the draft rule should include several notice and record-keeping options (see below).

Regarding using the same baseline period for all pollutants, DNR needs to give more thought to allowing different baseline years for different pollutants (as in federal rule). DNR could include options for both the same baseline years and different baseline years in the draft rule.

Harris summarized the discussions thus far. The group has gotten significant agreement on PALs exclusion for avoidance caps. Our only problem with Clean Units is redesignation options, for which we have three potential areas for comment. PCPs seemed to be wrapped up. Applicability test has the most components and there are still some significant issues pending. Eagan said that the demand calculation issue appears to be a sticking point in several areas; the group could agree to continue to search for a solution.

Example for Applicability Test

50-ton unit goes to 60 tons

- 5 year projection w/o change = 100 tons
- 10 year projection = 70 tons

Applicability Test Review

- 1) Capacity changed unit excluded from emission projection
 - Historical data

- Certification by company
(Placeholder language...)
- 2) Definition of "replacement unit" - using federal rule language. Issue - what is the boundary that constitutes "replacement"?
- 3) Notice, record keeping
 - Options
 - Industry provides demand number
 - Industry provides demand number and explanation
 - Check box
 - Industry will fill out DNR form

Clarity issues - see <http://www.dnr.state.wi.us/org/aw/air/HOT/nsr/nov052003/remainingclarifications.pdf>.

Hanson said that out of 68 areas in the rule markup that needed clarification, the group now has only 13 left to clarify (see slides). The areas that still need clarity are:

- Definition of "project"
- "Reasonable possibility"
- Procedure for redistributing PAL emissions
- Use of emission factors

Homework for 11/13 - Participants should bring options for the remaining clarity issues.

Pace of efforts after 11/13 - DNR needs to build time into their schedule to work in the public comment period, but they want to continue having regular dialog and continue working on these issues. Industry wants to work on the minor source rule faster and sooner rather than slower and later and suggested taking a break until after the Thanksgiving holiday, then meeting once or twice in December and again once or twice a month thereafter until we work through this. DNR sees the need to add a few more people to the advisory group to represent minor sources. We need to establish a timeline for revising NR 406 the same way we established one for revising NR 405.

Next meeting 11/13/03

- 4 clarity issues
- Draft rule process/review
- Next phase of conversation - issues/timeline

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Prepared by Anne Urbanski